must manifest this intention objectively so that the law can deal with it. This is the basis of the requirement of a deed or delivery. Is a parol order to his debtor to pay another a sufficient manifestation of the creditor's donative intent? An oral gratuitous assignment of a chose in action is at least an authority to the donee to collect and to the debtor to pay the donee, but an authority is revocable and is revoked by death.[22] A distinction has been suggested [23] between an authority and an order, which latter was said to be irrevocable, but this does not seem to be supported by reason or authority.[24] In a case where the donative intent is very clear and where there is no tangible evidence of the chose in action to deliver, should an oral direction operate as an irrevocable transfer rather than a mere authority? Such a principle would secure the interest of owners in the free transfer of their property. A requirement of clear proof in each case of actual intent to give would tend to prevent fraud and unfounded claims. The slight difference in fact between an oral gratuitous declaration of trust and an oral declaration of gift is merely technical. The vast difference in their legal effect cannot be due to equally divergent interests.[25] These considerations tend to support the doctrine of the Nebraska case. But the law cannot secure every interest.[26] The greater interest in the general security of transactions and the prevention of fraud often requires a general rule of property law that leaves some interests of owners unsecured. And although wide inroads have been made on the strict requirement of delivery, it may be questioned whether an oral direction without more is not too informal to transfer title.[27] On the other hand, delivery of a written declaration of gift would seem to furnish the necessary proof of the donor's intent without imposing too cumbersome formalities on the transfer.[28]

CORROBORATIVE EVIDENCE. — "Witnesses are to be weighed, not counted." This is the general rule of the common law, in contradistinction to the numerical requirements of the civil [1] and of the canon law.[2] The statutory requirement of two witnesses in treason cases is almost

393 (1918); Huenink *v.* Heittbrink, 177 N. W. 796 (Neb.) (1920); Reynolds *v.* Thompson, 161 Ky. 772, 171 S. W. 379 (1914).

[22] See 1 WILLISTON, CONTRACTS, § 440.

[23] See George H. Balkam, "Payment of Bill of Exchange or Check by the Drawee after the Drawer's Death," 14 HARV. L. REV. 588.

[24] See John M. Zane, "Death of the Drawer of a Check," 17 HARV. L. REV. 104.

[25] See C. B. Labatt, "The Inconsistencies of the Laws of Gifts," 29 AM. L. REV. 361.

[26] See Roscoe Pound, "The Limits of Effective Legal Action," 3 AM. BAR ASS'N JOURN. 55, 27 INT. JOURN. OF ETHICS, 150.

[27] Van Cleef *v.* Maxfield, 103 Misc. 448, 171 N. Y. Supp. 333, aff'd 186 App. Div. 906, 172 N. Y. Supp. 923 (1918); Cohen *v.* Cohen, 107 Misc. 635, 177 N. Y. Supp. 180 (1919); Cardoza *v.* Leveroni, *supra*. But see Ebel *v.* Piehl, 134 Mich. 64, 95 N. W. 1004 (1903).

[28] Hawn *v.* Stoler, 208 Pa. 610, 57 Atl. 1115 (1904); Adams *v.* Merced Stone Co., 176 Cal. 415, 178 Pac. 498 (1917); Humphrey *v.* Ogden, 53 Colo. 309, 125 Pac. 110 (1912); *In re* Cohn, *supra;* Hawkins *v.* Union Trust Co., *supra*.

[1] See DIG. 22, 5, 12; COD. 4, 20, 4.

[2] See CORP. JUR. CANON., DECRET. GREG., lib. 2, tit. 20, *de testibus*, c. 23.

the only exception to this rule.[3] But in certain exceptional cases the testimony of a single witness is insufficient unless corroborated. First, no one can be convicted of perjury on the uncorroborated testimony of a single witness.[4] Second, an extrajudicial confession must be supported by independent proof of the *corpus delicti*.[5] Third, by statute in many jurisdictions no conviction can be had on the uncorroborated testimony of an accomplice.[6] Fourth, in various offenses against women, corroboration of the complainant's testimony is often required by statute.[7]

Although the requirement of corroborative evidence is thus not uncommon, there is surprising lack of judicial definition of what constitutes such evidence; and the single statutory attempt at a complete definition is unsatisfactory.[8] The wide divergence of judicial opinion which this unsettled state of the law may produce is well illustrated in a recent English case.[9] There proceedings were instituted under the Bastardy Act,[10] which requires that the complainant's evidence be corroborated. In attempted corroboration it was proved (1) that the complainant had served the defendant as housekeeper for three years, (2) that the defendant called a doctor when the child was born, (3) that he allowed the complainant and her child to remain in his house for five weeks after the birth, (4) that he never inquired as to the child's paternity, and (5) that he failed to answer a letter accusing him of being the child's father.[11] The Divisional Court held that this was sufficient corroboration;[12] but this decision was reversed by the Court of Appeal. In each court there was a division of opinion.[13]

In approaching the problem of what constitutes corroborative evidence, the policy of the statutes or rules requiring it becomes important. This policy differs in the various classes of cases. In the case of per-

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[3] See 3 WIGMORE, EVIDENCE, 2 ed., § 2036.

[4] Rex *v.* Gardner, 8 C. & P. 737 (1839); Commonwealth *v.* Parker, 2 Cush. (Mass.) 212 (1848); Whittle *v.* State, 79 Miss. 327, 30 So. 722 (1901).

[5] Johnson *v.* State, 59 Ala. 37 (1877); Gore *v.* People, 162 Ill. 259, 44 N. E. 500 (1896). The law on this point in England is still unsettled. *Cf.* Rex *v.* White, R. & R. 509 (1823); Rex *v.* Flaherty, 2 C. & K. 782 (1847).

[6] For a list of these statutes, see 3 WIGMORE, EVIDENCE, 2 ed., § 2056, n. 10. They are in force in about half the jurisdictions in the United States.

[7] Abduction: N. Y. CONSOL. LAW, PENAL, § 71; 1920 ORE. LAWS, § 1542; 1913 S. D. COMP. LAWS, § 366; 1904 VA. ANN. CODE, § 3679; 1913 NEB. R. S., § 9116. Abortion: 1912 S. C. CRIM. CODE, § 150; 1917 UTAH COMP. LAWS, 8988. Bastardy: 35 & 36 VICT., c. 65, § 4. Rape on a child under the age of consent: 48 & 49 VICT., c. 65, §§ 2–4; 1892 CANADA CRIM. CODE, § 685. Seduction: 1897 ALA. CODE, § 5503; 1891 COLO. ANN. STATS., § 1325; N. Y. CONSOL. LAW, PENAL, § 2177; 1910 OKLA. R. L., 5886; 1913 NEB. R. S., § 8793. This list is illustrative rather than exhaustive.

[8] See 1920 ORE. LAWS, § 701, "additional evidence of a different character directed to the same point."

[9] Thomas *v.* Jones, [1921] 1 K. B. 22. See RECENT CASES, p. 675, *infra*. See 69 UNIV. OF PA. L. REV. 180 for a view of this case differing somewhat from that expressed in this note.

[10] See 35 & 36 VICT., c. 65.

[11] Another circumstance relied upon in the lower court as corroboration was the defendant's demeanor at the trial, but the case came up in such a way that it was impossible for the upper court to consider this.

[12] Thomas *v.* Jones, [1920] 2 K. B. 399.

[13] In the Divisional Court, the evidence was held to be sufficient corroboration by Reading, C. J., and Roche, J., Avory, J., dissenting. This was reversed in the Court of Appeal by Bankes and Atkin, L.JJ., Scrutton, L.J., dissenting.

jury, the rule seems an historical anomaly;[14] as does the rule as to confessions.[15] But behind the rule as to accomplice testimony a sound public policy may be found. It is clearly dangerous to allow a conviction on the unsupported testimony of a man of admitted bad character, who may be purchasing immunity by making a false accusation. At common law, this danger could be obviated by cautions given to the jury by the trial judge, and this was the general practice.[16] But under the usual American statutes which prevent the judge from commenting on the facts, such cautions cannot be given, and a hard and fast rule of law is necessary. The same general considerations apply to the fourth class of cases. Here in most cases the complainant admits her own bad character, and in all cases the charge is one easy to make and hard to disprove,[17] one apt to appeal to the sentimentality of juries, and a fertile source of blackmail.

If, then, the policy behind the rule requiring corroborative evidence is sound, the rule should be interpreted so as to afford real protection from false accusations to persons coming under it. Three questions of interpretation are involved; namely, as to the object, the source, and the degree of corroborative evidence required. As to the first, the view taken by the early English cases[18] and by a minority of American jurisdictions[19] seems unsatisfactory. It is said that any evidence tending to support the complainant's testimony in some material part is sufficient, even though it fails to connect the defendant with the offense at all. A sounder view is taken by the later English cases[20] and by the weight of American authority.[21] Under this view, there must be corroboration as to all the material elements of the offense, including the identity of the defendant. This requirement has been embodied in several statutes.[22]

Secondly, the testimonial source of the corroborative evidence must be independent of the witness to be corroborated.[23] The evidence may come from the defendant himself, and it has been said that admissions may be sufficient,[24] though this is doubtful.[25] In the principal case, the

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[14] See 3 WIGMORE, EVIDENCE, 2 ed., § 2040; 3 STEPHEN, HISTORY OF THE CRIMINAL LAW, 245.

[15] See 3 WIGMORE, EVIDENCE, 2 ed., § 2070.

[16] *Re* Meunier, [1894] 2 Q. B. 415; Cross *v.* People, 47 Ill. 152 (1868).

[17] See 1 HALE, PLEAS OF THE CROWN, 635.

[18] Rex *v.* Birkett, R. & R. 252 (1813); Tidd's Trial, 33 How. St. Tr. 1483 (1820).

[19] State *v.* Hennessy, 55 Ia. 299, 7 N. W. 641 (1880); Cox *v.* Commonwealth, 125 Pa. St. 94, 17 Atl. 227 (1889).

[20] Rex *v.* Farler, 8 C. & P. 106 (1837); Rex *v.* Stubbs, 7 Cox C. C. 48 (1855); Rex *v.* Baskerville, [1916] 2 K. B. 658.

[21] Miller *v.* Commonwealth, 78 Ky. 15 (1879); People *v.* O'Neil, 101 N. Y. 251, 16 N. E. 68 (1888); State *v.* Lawler, 28 Minn. 276, 9 N. W. 698 (1881).

[22] See 1897 ALA. CODE, § 5300; 1887 IA. CODE, § 7871.

[23] Lopez *v.* State, 34 Tex. 133 (1870). Thus, where there is a statutory requirement of corroboration in prosecutions for rape, immediate complaints of the prosecutrix, while admissible, are not sufficient corroboration. People *v.* Page, 162 N. Y. 272, 56 N. E. 750 (1900); State *v.* Stewart, 52 Wash. 61, 100 Pac. 153 (1909). Nor are letters, which no one but the prosecutrix can identify as having been written by the defendant, sufficient corroboration. Rogers *v.* State, 101 Ark. 45, 141 S. W. 491 (1911).

[24] State *v.* Knuse, 24 S. D. 171, 123 N. W. 71 (1909); People *v.* Cascia, 181 N. Y. Supp. 855 (1920).

[25] See 34 HARV. L. REV. 205. But see 30 YALE L. J. 355.

defendant's failure to answer the complainant's accusing letter was not even an admission,[26] and hence could not be corroborative.

With regard to the third question, the necessary degree of corroboration, it is clear that evidence of facts reasonably consistent with either innocence or guilt on the part of the defendant is insufficient. Thus evidence of opportunity to commit the offense is not corroboration.[27] Hence, in the principal case, the fact that the complainant had been the defendant's housekeeper was properly held insufficient corroboration. On the other hand, the corroborative evidence need not be sufficient of itself to justify a verdict,[28] and circumstantial evidence may be enough.[29] It is submitted that the test of what constitutes corroborative evidence may be laid down thus: the evidence offered in corroboration must tend to create a reasonable suspicion of the guilt of the particular defendant, independent of the complainant's testimony, although it need not be sufficient of itself to support a verdict. On the basis of this test the decision in *Thomas* v. *Jones* [30] seems clearly sound. That the defendant called a doctor to attend the complainant, and that he refrained from inquiry as to the child's paternity, are as consistent with benevolence as with guilt. That he allowed the woman and her child to remain in his house for five weeks can hardly be regarded as creating a reasonable suspicion of guilt, independently of the complainant's story, in the absence of any evidence that the complainant had recovered from her confinement before the end of that period.

RECENT CASES

ADMIRALTY — SALVAGE — VOLUNTARY SERVICE — The libellants were English and Belgian soldiers who, in February, 1920, were at Murmansk in Russia on their way to join the White Army. At that time the Bolshevist forces gained control of Murmansk. The plaintiffs escaped by boarding a vessel, which was flying the White flag, and, after forcibly resisting Bolshevist attempts at capture, took the vessel to a neutral port and surrendered her to her owners. All this was done without the assistance and partly against the will of the vessel's crew. The plaintiffs seek salvage. *Held*, that salvage be awarded. *The Lomonosoff*, 37 T. L. R. 151 (P. D.).

It is settled law that services leading to salvage must have been rendered voluntarily and not as a matter of duty. *The Francis and Eliza*, 2 Dods. 115; *Governor Raffles*, 2 Dods. 14. But the plaintiffs in the principal case may well be considered volunteers on the ground that what they did far exceeded their duty as soldiers. See *The Two Friends*, 1 C. Rob. 272; *The Cargo ex Ulysses*, 13 P. D. 205. A better objection was raised by the defense, namely, that the plaintiffs were not volunteers because they were acting to save their own lives. The court found that another way of escape was open, but it intimated that that was not essential to make the plaintiffs volunteers. However, the case

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[26] Wiedeman *v.* Walpole, [1891] 2 Q. B. 534.

[27] Burbury *v.* Jackson, [1917] 1 K. B. 16; State *v.* Scott, 28 Ore. 331, 42 Pac. 1 (1895). But see Cole *v.* Manning, 2 Q. B. D. 611 (1877).

[28] Ransone *v.* Christian, 56 Ga. 351 (1876).

[29] People *v.* De Nigris, 157 App. Div. 798, 142 N. Y. Supp. 620 (1913).

[30] [1921] 1 K. B. 22.